

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD., *et al.*,

Debtors.¹

Chapter 11

Case No. 15-[] ()

(Joint Administration Requested)

**MOTION OF THE DEBTORS AND DEBTORS IN POSSESSION
FOR ENTRY OF AN ORDER SETTING AN EXPEDITED HEARING
ON “FIRST DAY MOTIONS” AND RELATED RELIEF**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by their undersigned counsel, file this motion (the “Motion”) for entry of an order, the proposed form of which is attached as Exhibit A (the “Order”), pursuant to section 105(a) of the Bankruptcy Code: (i) deeming the Debtors’ *Notice of Filing Chapter 11 Petitions, First Day Motions, and Proposed Hearing on First Day Motions*, attached to the Order as Exhibit 1 (the “Notice”), to be adequate and appropriate notice under the circumstances and (ii) setting an expedited hearing at the Court’s earliest convenience on the Debtors’ “first day” motions (collectively, the “First Day Motions”) described on the proposed first day agenda, attached to

¹ The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule 1 attached hereto.

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*Proposed Counsel to the Debtors
and Debtors in Possession*

the Notice as Annex 1 (the “Proposed First Day Agenda”). In support of this Motion, the Debtors rely on the Declaration of Michael R. Castle in support of the Chapter 11 Petitions and Related Motions (the “Castle Declaration”). In further support of this Motion, the Debtors submit as follows:

I. Jurisdiction, Venue and Predicates for Relief

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157 (b)(2).

2. The predicate for the relief requested herein is sections 105(a) of the Bankruptcy Code.

II. Background

3. On the date hereof (the “Petition Date”), each of the Debtors filed with the Court their respective voluntary petitions for relief under chapter 11 of Title 11 of the Bankruptcy Code, commencing the above-captioned chapter 11 cases. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. No creditors’ committee has been appointed in these cases. No trustee or examiner has been appointed.

5. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of their chapter 11 cases.

6. A full description of the Debtors’ business operations, corporate structures, capital structures, and reasons for commencing these cases is set forth in full in the Castle Declaration,

which was filed contemporaneously with this Motion and which is incorporated herein by reference. Additional facts in support of the specific relief sought herein are set forth below.

III. Relief Requested

7. By the Motion, the Debtors request entry of the Order : (i) deeming the Debtors' *Notice of Filing Chapter 11 Petitions, First Day Motions, and Proposed Hearing on First Day Motions* to be adequate and appropriate notice under the circumstances and (ii) setting an expedited hearing at the Court's earliest convenience on the First Day Motions.

IV. Basis for Relief Requested

8. On the Petition Date, the Debtors filed the First Day Motions to be heard by this Court on an expedited basis. Prompt entry of the relief requested in the First Day Motions is critical to maintaining the Debtors' ongoing operations.

9. An expedited hearing on the First Day Motions is appropriate under these circumstances and is consistent with past practice in virtually every significant chapter 11 case where certain relief is required at the outset of the case to ensure a debtor's smooth transition into chapter 11.

10. Section 105(a) of the Bankruptcy Code provides this Court with the power to set an expedited First Day Hearing on the First Day Motions. Specifically, section 105(a) states that a bankruptcy court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a).

11. The relief sought in the First Day Motions is essential to avoid substantial disruption to the normal operations of the Debtors' business to the detriment of all parties in interest. Moreover, Bankruptcy Courts in Virginia have granted similar relief concerning expedited consideration of first day motions in other large chapter 11 cases. *See, e.g., In re IBCS*

Mining, Inc., Case No. 14-61215 (KRH) (Bankr. W.D. Va. Aug. 25, 2014); *In re James River Coal Co.*, Case No. 14-31848 (KRH) (Bankr. E.D. Va. Apr. 10, 2014); *In re Free Lance-Star Publishing Co. of Fredericksburg, VA*, Case No. 14-30316 (KRH) (Bankr. E.D. Va. Jan. 30, 2014); *In re AMF Bowling Worldwide, Inc.*, Case No. 12-36495 (DOT) (Bankr. E.D. Va. Nov. 13, 2013); *In re RoomStore, Inc.*, Case No. 11-37790 (DOT) (Bankr. E.D. Va. Dec. 14, 2011); *In re Workflow Mgmt., Inc.*, Case No. 10-74617 (SCS) (Bankr. E.D. Va. Oct. 1, 2010); *In re MMR Holdings, Inc.*, Case No. 10-32658 (DOT) (Bankr. E.D. Va. Apr. 16, 2010); *In re Bear Island Paper Co., LLC.*, Case No. 10-31202 (DOT) (Bankr. E.D. Va. Feb. 26, 2010); *In re Movie Gallery, Inc.*, Case No. 10-30696 (DOT) (Bankr. E.D. Va. Feb. 3, 2010); *In re LandAmerica Fin. Grp., Inc.*, Case No. 08-35994 (KRH) (Bankr. E.D. Va. Nov. 28, 2008); *In re Circuit City Stores, Inc.*, Case No. 08-35653 (KRH) (Bankr. E.D. Va. Nov. 10, 2008).

V. Notice

12. The Debtors have served notice of the Motion on (a) the U.S. Trustee; (b) the attorneys for an informal group of holders of the Debtors' prepetition secured notes and lenders under the Debtors' postpetition financing; (c) all known creditors holding secured claims against the Debtors' estates; (d) those creditors holding the 30 largest unsecured claims against the Debtors' estates on a consolidated basis; (e) the Internal Revenue Service; (f) the Canadian Revenue Agency; (g) the Securities and Exchange Commission; (h) the Ontario Securities Commission; and (i) the United States Environmental Protection Agency.

VI. No Previous Request

13. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as is just and proper.

DATED: April 6, 2015

Respectfully submitted,

/s/ Henry P. (Toby) Long, III

Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77979)
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*Proposed Counsel to the Debtors
and Debtors in Possession*

SCHEDULE 1
(Debtor Entities)

- | | |
|--|---|
| 1. Xinergy Ltd. (3697) | 14. Whitewater Contracting, LLC (7740) |
| 2. Xinergy Corp. (3865) | 15. Whitewater Resources, LLC (9929) |
| 3. Xinergy Finance (US), Inc. (5692) | 16. Shenandoah Energy, LLC (6770) |
| 4. Pinnacle Insurance Group LLC (6851) | 17. High MAF, LLC (5418) |
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| 12. South Fork Coal Company, LLC (3113) | 25. Raven Crest Leasing, LLC (7844) |
| 13. Sewell Mountain Coal Co., LLC (9737) | 26. Raven Crest Contracting, LLC (7796) |

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD., *et al.*,

Debtors.¹

Chapter 11

Case No. 15-[] ()

(Joint Administration Requested)

**ORDER SETTING AN EXPEDITED HEARING
ON “FIRST DAY MOTIONS” AND RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) for entry of an order (the “Order”), pursuant to section 105(a) of the Bankruptcy Code: (i) deeming the Debtors’ *Notice of Filing Chapter 11 Petitions, First Day Motions, and Proposed Hearing on First Day Motions*, attached hereto as Exhibit 1 (the “Notice”), to be adequate and appropriate notice under the circumstances and (ii) setting an expedited hearing at the Court’s earliest convenience on the Debtors’ “first day” motions (collectively, the “First Day Motions”) described on the proposed first day agenda, attached to the Notice as Annex 1 (the “Proposed First Day Agenda”); the Court finds that (a) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b); (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) the relief requested in the Motion

¹ The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule 1 attached hereto.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

is in the best interest of the Debtors, their estates and creditors; (d) proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and (e) upon the record herein after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein. Therefore,

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is hereby GRANTED.
2. A hearing will be held on **April 7, at 2:00 p.m. (ET)** (the “First Day Hearing”), to hear and consider the First Day Motions.
3. The form of the Notice hereby is approved in all respects.
4. Service by hand, overnight delivery, electronic mail, or facsimile of the Notice of Commencement and the proposed First Day Agenda, to the extent practicable, to the following parties or, in lieu thereof, to their counsel if known, hereby is deemed adequate and appropriate notice: (a) the Office of the United States Trustee for the Western District of Virginia; (b) the attorneys for the Debtors’ proposed postpetition lenders; (c) all known creditors holding secured claims against the Debtors’ estates; (d) those creditors holding the 30 largest unsecured claims against the Debtors’ estates on a consolidated basis; (e) the Internal Revenue Service; (f) the Canadian Revenue Agency; (g) the United States Environmental Protection Agency; (h) the Securities and Exchange Commission; (i) the Ontario Securities Commission; and (j) any parties having a particular interest in a First Day Motion, as indicated in such First Day Motion.
5. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

6. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

7. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: _____, 2015

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/ Henry P. (Toby) Long, III

Tyler P. Brown (VSB No. 28072)

Henry P. (Toby) Long, III (VSB No. 75134)

Justin F. Paget (VSB No. 77949)

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Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT 1

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD., *et al.*,

Debtors.¹

Chapter 11

Case No. 15-[] ()

(Joint Administration Requested)

**NOTICE OF FILING OF CHAPTER 11 PETITIONS, FIRST DAY
MOTIONS, AND PROPOSED HEARING ON FIRST DAY MOTIONS**

PLEASE TAKE NOTICE that on April 6, 2015 (the “Petition Date”), the debtors listed on Schedule 1 attached hereto (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) with the United States Bankruptcy Court for the Western District of Virginia (the “Court”) commencing the above-captioned chapter 11 cases.

PLEASE TAKE FURTHER NOTICE that together with the chapter 11 petitions, the Debtors also requested an expedited hearing before the Court (the “First Day Hearing”) to consider certain motions (collectively, the “First Day Motions”) filed on the Petition Date and listed on the Proposed First Day Agenda attached hereto as Annex 1.

¹ The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule 1 attached hereto.

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*Proposed Counsel to the Debtors
and Debtors in Possession*

PLEASE TAKE FURTHER NOTICE that the Court has scheduled the First Day Hearing on April 7, 2015, at 2:00 p.m. at the United States Bankruptcy Court for the Western District of Virginia, Roanoke Division, 2nd Floor, 210 Church Avenue, Roanoke, Virginia 24011.

PLEASE TAKE FURTHER NOTICE that a copy of each of the First Day Motions may be obtained : (i) by accessing the Court's website at <https://ecf.vawb.uscourts.gov> through an account obtained from the Pacer Service Center at 1-800-676-6856 or www.pacer.gov, or (ii) free of charge, by accessing the Debtors' case information website at www.americanlegalclaims.com/xinergy.

PLEASE TAKE FURTHER NOTICE that **your rights may be affected.** You should read the First Day Motions carefully and discuss them with your attorney, if you have one in the chapter 11 cases. (If you do not have an attorney, you may wish to consult one).

PLEASE TAKE FURTHER NOTICE that if you do not want the Court to grant the relief requested in the First Day Motions, or if you want the Court to consider your views on the First Day Motions, then you or your attorney must attend the First Day Hearing.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the First Day Motions and may enter orders granting the relief requested in the First Day Motions.

DATED: April 6, 2015

Respectfully submitted,

/s/ Henry P. (Toby) Long, III

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Henry P. (Toby) Long, III (VSB No. 75134)
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*Proposed Counsel to the Debtors
and Debtors in Possession*

SCHEDULE 1

(Debtor Entities)

- | | |
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| 1. Xinergy Ltd. (3697) | 14. Whitewater Contracting, LLC (7740) |
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ANNEX 1

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD., et al.,

Debtors.¹

Chapter 11

Case No. 15-[] ()

(Joint Administration Requested)

**PROPOSED FIRST DAY AGENDA FOR HEARING
ON APRIL 7, 2015, AT 2:00 P.M. (PREVAILING EASTERN TIME)**

I. INTRODUCTION

In support of the following relief requested at the first day hearing, the Debtors refer the Court to the Declaration of Michael R. Castle in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings [ECF No. ____]

II. ADMINISTRATIVE MOTIONS

1. **"Motion to Expedite"** – *Motion of the Debtors and Debtors in Possession for Entry of an Order Setting an Expedited Hearing on "First Day Motions" and Related Relief* [ECF No. ____]
2. **"Joint Administration"** – *Motion of Debtors and Debtors in Possession for an Order Directing Joint Administration of their Related Chapter 11 Cases* [ECF No. ____]
3. **"Notice of Commencement"** – *Motion of Debtors and Debtors in Possession for Entry of an Order Approving the Form and Manner of Notice of Commencement of the Cases* [ECF No. ____]
4. **"ALCS Retention"** – *Motion of Debtors and Debtors in Possession for Entry of an Order Appointing American Legal Claims Services, LLC as Claims, Noticing and Balloting Agent* [ECF No. ____]
5. **"Creditor List Motion"** – *Motion of the Debtors and Debtors in Possession For Entry of an order Authorizing Debtors to (i) Prepare a List of Creditors in Lieu of Submitting a Formatted Mailing Matrix and*

¹ The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule 1 attached hereto.

(ii) File a Consolidated List of Debtors' 30 Largest Unsecured Creditors [ECF No. ____]

6. **"Extend Schedules Deadline"** – *Motion for Entry of an Order (i) Extending the Time to File Schedules and Statements of Financial Affairs and (ii) Extending the Time to Schedule the Meeting of Creditors [ECF No. ____]*
7. **"Case Management"** – *Motion of the Debtors and Debtors in Possession for Entry of an Order Establishing Notice, Case Management and Administrative Procedures [ECF No. ____]*

III. OPERATIONAL MOTIONS

8. **"Cash Management"** – *Motion of the Debtors and Debtors in Possession for Entry of an Order (i) Authorizing Debtors to Maintain Existing Bank Accounts and Business Forms and Continue to Use Existing Cash Management System; (ii) Granting Administrative Expense Status for Intercompany Claims; and (iii) Waiving the Requirements of Section 345(b) of the Bankruptcy Code [ECF No. ____]*
9. **"Wages and Benefits"** – *Motion of Debtors and Debtors in Possession for Entry of an Order (i) Authorizing Debtors To Pay Prepetition Wages, Salaries and Benefits; (ii) Authorizing Debtors to Maintain Employee Benefit Programs in the Ordinary Course of Business; (iii) Authorizing Current and Former Employees to Proceed With Workers' Compensation Claims and (iv) Directing Applicable Financial Institutions to Honor and Process Related Checks and Transfers [ECF No. ____]*
10. **"Utilities"** – *Debtors' Motion for Entry of an Order (i) Prohibiting Utilities from Altering, Refusing or Discontinuing Service, (ii) Deeming Utility Companies Adequately Assured of Future Performance and (iii) Establishing Procedures for Determining Requests for Additional Adequate Assurance [ECF No. ____]*
11. **"Critical Vendors"** – *Motion of Debtors and Debtors in Possession for Entry of Interim and Final Orders Authorizing (i) Payment of Certain Prepetition Claims of Critical Vendors, (ii) Payment of 503(b)(9) Claims to Certain Critical Vendors and (iii) Financial Institutions to Honor and Process Related Checks And Transfers [ECF No. ____]*
12. **"Insurance"** – *Debtors' Motion for Entry of an Order Authorizing (i) Debtors to Continue and Renew Their Liability, Property, Casualty and Other Insurance Programs and Honor All Obligations in Respect Thereof and (ii) Financial Institutions to Honor and Process Related Checks and Transfers [ECF No. ____]*

13. **“Surety Bond Program”** – *Motion of Debtors and Debtors in Possession for Entry of Interim and Final Orders Authorizing (i) Debtors to Continue and Renew Surety Bond Program and (ii) Financial Institutions to Honor and Process Related Checks And Transfers* [ECF No. ____]
14. **“Taxes”** – *Motion of Debtors and Debtors in Possession for Entry of an Order Authorizing (i) Debtors to Pay Certain Prepetition Taxes, Governmental Assessments and Fees and (ii) Financial Institutions to Honor and Process Related Checks And Transfers* [ECF No. ____]
15. **“NOLs”** – *Debtors’ Motion for Entry of Interim and Final Orders Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Equity Interests in the Debtors’ Estates* [ECF No. ____]
16. **“Foreign Representative Motion”** – *Motion of the Debtors and Debtors in Possession For Entry of an Order Authorizing Xinergy Ltd. to Act as Foreign Representative Pursuant to 11 U.S.C. § 1505* [ECF No. ____]

IV. FINANCING MOTION

17. **“Postpetition Financing”** – *Motion of Debtors and Debtors in Possession, Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) for Entry of Interim and Final Orders (i) Authorizing Debtors (A) To Obtain Postpetition Financing and (B) to Utilize Cash Collateral, (ii) Granting Adequate Protection to Prepetition Secured Lenders and (iii) Scheduling Final Hearing* [ECF No. ____]

DATED: April 6, 2015

/s/ Henry P. (Toby) Long, III

Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
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*Proposed Counsel to the Debtors
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SCHEDULE 1
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